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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS GUILLERMO GARCIA,

Defendant and Appellant.

G053066

(Super. Ct. No. 96CF3211)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Cheri T. Pham, Judge. Affirmed.

Michael B. McPartland, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1998, appellant Jesus Guillermo Garcia was convicted by a jury of terrorist threats (Pen. Code, § 422),<sup>1</sup> and it was found that he had suffered two prior convictions under California's Three Strikes law. He was sentenced to 25 years to life in prison. He appealed that conviction, but it was upheld by this court.

In 2014, he petitioned for relief under Proposition 36, also known as the Three Strikes Reform Act, and codified as section 1170.126 and related sections. He was represented by counsel, who argued in his behalf, but was refused because his committing crime (terrorist threats) did not qualify for consideration under the new law. He appealed again.

We appointed new counsel to represent him on that appeal. Counsel filed a brief which set forth the procedural facts of the case (the facts of the crimes themselves are largely irrelevant because the argument is solely directed at Gonzalez's plea and the application to it of § 1170.126 and the laws enacted to put it into effect). Counsel did not argue against his client, but advised us there were no issues to argue on his behalf.

Garcia was invited to express his own objections to the proceedings against him. The time allotted for such a supplemental brief has passed and he has filed no such brief. Under the law, we are required to review the record and see if we can find any issues that might result in a finding of error when an attorney tells us he/she is unable to. (*People v. Wende* (1979) 25 Cal.3d 436.) We have done so. We have searched not for issues upon which Guzman *would* prevail, but issues upon which he *might possibly* prevail.

We have found none. It is true that Garcia's offense – terrorist threats – was not classified as a serious felony when it was committed. But last year the California Supreme Court decided that for purposes of Proposition 36, "the classification of the current offense as serious or violent is based on the law as of November 7, 2012, the

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<sup>1</sup>

All further statutory references are to the Penal Code.

effective date of Proposition 36.” By that time, terrorist threats had been incorporated into the list of serious and violent felonies for purposes of the Three Strikes law. So Garcia does not qualify for the relief he sought, and we can find nothing else that could be argued in his behalf.

Appellate counsel was correct in concluding there was no arguable issue on appeal.

The order is affirmed.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.